Office - Supreme Court, U. S.
FILED
AUG 3 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

---

# No. 303

---

EDWARD WILLIAMS,

*Petitioner,*

*vs.*

JOHN J. GOLDEN, MARSHAL, CITY OF ST. LOUIS.

---

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI AND BRIEF IN SUPPORT THEREOF.**

---

ROBERT W. HALL,
J. A. GOCHENOUR,
*Counsel for Petitioner.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Petition for writ of certiorari | 1 |
| Summary statement of the matter involved | 2 |
| Reasons relied on for the allowance of the writ | 3 |
| Prayer for writ | 3 |
| Brief in support of petition | 5 |
| Opinion of the court below | 5 |
| Jurisdiction | 5 |
| Statement of the case | 6 |
| Specification of errors | 6 |
| Argument | 7 |


## Table of Cases Cited.


| | |
|---|---|
| *Cantwell* v. *State of Connecticut*, 60 Sup. Ct. 900 | 7 |
| *Holmes* v. *Jennison*, 14 Pet. 540, 10 L. Ed. 579 | 6 |
| *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949 | 6, 7 |
| *Reetz* v. *Michigan*, 198 U. S. 505, 47 L. Ed. 563 | 7 |
| *Schneider* v. *State of New Jersey, Town of Irvington*, 308 U. S. 147 | 6, 7 |
| *Zucht* v. *King*, 260 U. S. 174, 67 L. Ed. 194, 43 Sup. Ct. 24 | 6 |


## Statutes Cited.


| | |
|---|---|
| Constitution of the United States, 14th Amendment | 3, 6 |
| Judicial Code, Sec. 237(b), 28 U. S. C. 344 | 6 |
| Ordinance No. 40996 of the City of St. Louis | 2 |

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

---

# No. 303

---

EDWARD WILLIAMS,

*Petitioner,*

*vs.*

JOHN J. GOLDEN, MARSHAL, CITY OF ST. LOUIS.

*Respondent.*

---

## PETITION FOR WRIT OF CERTIORARI.

*May It Please the Court:*

Your petitioner Edward Williams respectfully presents to this Honorable Court this his petition for writ of certiorari to be directed to Supreme Court of Missouri directing said court and clerk thereof to certify to this Court the transcript of record and proceedings in this cause in said court wherein this petitioner was the petitioner in an application for writ of habeas corpus in said court and respondent here was respondent in said court, together with the opinion of said court, for review and determination of said cause by this Court.

Your petitioner presents herewith a certified copy of record in said Supreme Court of Missouri.

**Summary Statement of the Matter Involved.**

On August 10, 1938, petitioner was arrested by the police of the City of St. Louis and held under an information (R. 6) charging him with violation of Ordinance No. 40996 (R. 6) of the City of St. Louis.

This ordinance makes it unlawful for any person, organization, society, association, or corporation to "solicit in money, donation of money, property or financial assistance of any kind, to sell or offer to sell any article, tag service, emblem, publication, ticket, advertisement, subscription, or anything of value on the plea or representation that said sale or solicitation or the proceeds thereof is for a charitable, religious, patriotic or philanthropic purpose" unless a permit is obtained from the commission as established by said ordinance.

While the petitioner was in custody of respondent John J. Golden, Marshal of the City of St. Louis, a writ of habeas corpus attacking the validity of the ordinance was filed in the Supreme Court of Missouri. The writ was granted June 6, 1939, and the cause ordered set for the September Term, 1939. The respondent duly filed his return and the matter was submitted to the court on briefs September 8, 1939. The Supreme Court of Missouri decided the matter only on the points of law raised and no testimony was introduced.

The opinion of the Supreme Court of Missouri in determining the constitutionality of the ordinance construed the ordinance as not being in conflict with the Fourteenth Amendment of the United States Constitution and in its opinion declared the ordinance constitutional (R. 6). In so holding the Supreme Court failed to take in consideration the latest applicable decisions of this Court.

**Reasons Relied on for the Allowance of the Writ.**

The Supreme Court of Missouri held the ordinance of the City of St. Louis, pleaded in plaintiff's petition for writ of habeas corpus, did not violate the Fourteenth Amendment of the Constitution of the United States.

This holding raised a Federal question and decided it in a way not in accord with the applicable decisions of this Court.

Petitioner contends that the decision of the Supreme Court of Missouri is contrary to the latest rulings of this Court and that if said decision is allowed to stand the liberty of this defendant and others in position similar to his is in jeopardy.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the Supreme Court of Missouri commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case known and entitled on its docket as No. 36727, Ex Parte Edward Williams, petitioner, vs. John J. Golden, Marshal of the City of St. Louis, respondent; that said judgment of the Supreme Court of Missouri may be reversed by this Honorable Court and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

ROBERT W. HALL,
J. A. GOCHENOUR,
*Counsel for Petitioner.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

---

# No. 303

---

EX PARTE EDWARD WILLIAMS,

*Petitioner,*

vs.

JOHN J. GOLDEN, MARSHAL, CITY OF ST. LOUIS,

*Respondent.*

---

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

---

### Opinion of the Court Below.

The opinion of the Supreme Court of Missouri has not yet been officially recorded but appears on page 16 of the record.

### Jurisdiction.

1. The judgment sought to be reviewed is a final judgment which has been rendered by the Supreme Court of Missouri (Div. No. 2), the highest court of that State in which a decision of the controversy could be had.

2. The date of the judgment to be reviewed is February 21, 1940 (R. 15).

3. Motion by petitioner for rehearing was filed in the Supreme Court of Missouri pursuant to the provision of Rule Twenty-one of that court, which motion for rehearing was duly considered and overruled by said court on the 4th day of May, 1940 (R. 28).

4. The specific claim advanced by petitioner in the lower court, decided adversely to him and which is relied upon as a basis of this Court's jurisdiction was that the ordinance of the City of St. Louis set forth in plaintiff's petition violated the Fourteenth Amendment of the Constitution of the United States and that the decisions of the Supreme Court of the State of Missouri was in favor of the constitutionality of the ordinance and further that the decision of the Supreme Court of Missouri was not in accord with the applicable decisions of this Court.

5. The statutory provision under which jurisdiction is invoked: Sec. 237 (b) Judicial Code (Title 28, Sec. 344, U. S. Code, Annotated).

6. Cases sustaining the jurisdiction of this Court:

*Zucht* v. *King*, 260 U. S. 174, 67 L. E. 194, 43 S. C. R. 24;

*Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. C. 666, 82 L. E. 949;

*Schneider* v. *State of New Jersey, Town of Irvington*, 308 U. S. 147, 84 L. E. 115;

*Holmes* v. *Jennison*, 14 Pet. 540-562, 10 L. E. 579.

## Statement of Case.

The full statement of case has been given in the petition and in the interest of brevity, such statement is not repeated at this point.

## Specification of Errors.

1. The court below erred in holding that the ordinance in question did not violate Section One, Fourteenth Amendment of the Constitution of the United States.

2. The court below erred in failing to grant the writ of *habeas corpus* as requested in petitioner's application.

3. The court below erred in failing to decide the question of the constitutionality of this ordinance as pleaded as in accordance with the applicable decisions of this Court.

**Argument.**

The basis for the application of this writ is the failure of the Supreme Court of Missouri to follow the decisions of this Court in the following cases:

*Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. C. 666, 82 L. E. 949;

*Schneider* v. *State of New Jersey, Town of Irvington*, 308 U. S. 147, 84 L. E. 115;

*Cantwell* v. *State of Conn.*, 60 Sup. Ct. 900.

It is the petitioner's contention that the three cases cited are the applicable cases in the construction of the ordinance.

All of the cases cited deal with the violation of an ordinance or statute similar to that in this case and hold the ordinance or statute unconstitutional.

It will be noticed from the opinion of the Supreme Court of Missouri (R. 19) the only case cited as the basis for declaring this ordinance constitutional is that of *Reetz* v. *Michigan*, 198 U. S. 505, 47 L. E. 563.

The *Reetz* case was decided by this Court in 1903 and pertains to a suit endeavoring to enforce the granting of a license to practice medicine. Certainly a decision of that nature can not apply to an ordinance that requires license for charitable, religious, patriotic and philanthropic purposes.

Under the decision of the Missouri Supreme Court the City of St. Louis is endeavoring to prosecute this defendant and others for failing to comply with the terms of the

ordinance in question and unless this Court sees fit to pass upon this ordinance, this defendant and those in similar positions are being deprived of the protection afforded by the Constitution of the United States.

The ordinance in question is even more drastic than those set forth in the cases heretofore cited as being the applicable decisions of this Court. The commission created by the terms of this ordinance is granted the right to revoke the license for a number of reasons, one of which is that "the solicitation is being conducted in a manner inimical to the public welfare of the community."

This provision allows the commission to determine as it sees fit, what is detrimental to public welfare. If a censorship of this nature be allowed to endure, the entire purpose of the Fourteenth Amendment is relegated to the waste basket and freedom of speech and press are a thing of the past.

The commission has the power to determine that the major political parties are patriotic organizations and that they cannot solicit funds in the City of St. Louis unless the entire structure of the organization comes under the supervision of the commission created and the money spent according to its dictates.

The sole contention of the officers of the City of St. Louis is that an ordinance of this nature is necessary to prevent fraud from being practiced on the public at large. This may be answered by a portion of the opinion of this Court in the case of *Schneider* v. *New Jersey*, in which the Court stated as follows:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others

> may not, be carried to the homes of citizens; such persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

In consideration of the foregoing premises, the petitioner respectfully submits that this cause is one calling for the exercise by this Court of its supervisory powers in order that the errors of the lower court may be corrected and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Missouri in this matter and finally reverse it.

ROBERT W. HALL,
J. A. GOCHENOUR,
*Counsel for Petitioner.*

(9228)

Office - Supreme Court, U. S.
FILED
SEP 16 1940
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES.

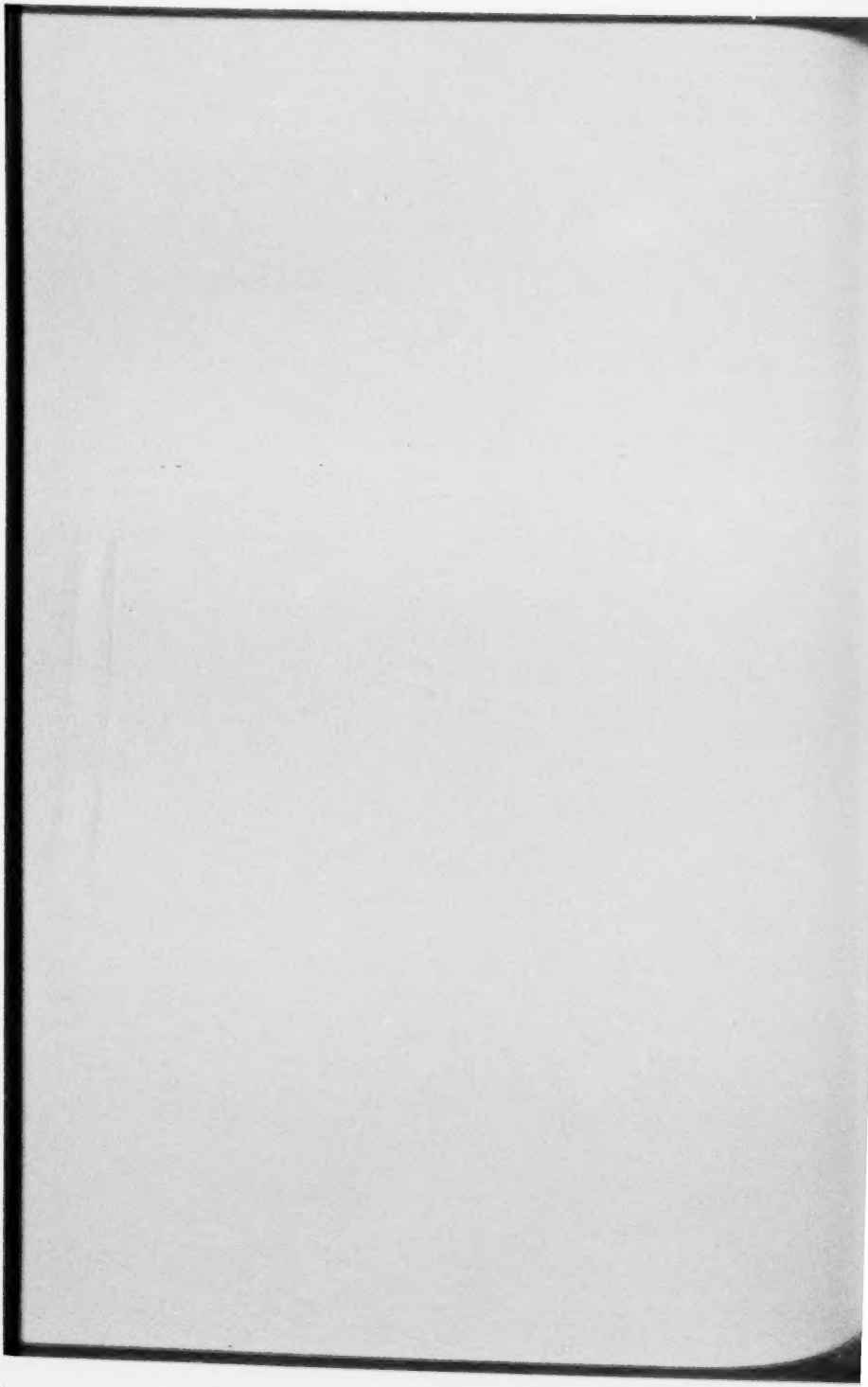
OCTOBER TERM, 1940.

EDWARD WILLIAMS,
Petitioner,
vs.
JOHN J. GOLDEN, Marshal, City of St. Louis,
Respondent.
No. 303.

## PETITIONER'S REPLY BRIEF.

ROBERT W. HALL,
J. A. GOCHENOUR,
Counsel for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.



## INDEX.


Page

I. As to the jurisdiction of this court..... 1

II. As to the argument of respondent that the cases cited by petitioner are not applicable..... 4


### Cases Cited.


Cantwell v. State of Conn., 60 Supreme Court 900, 84 L. E. 836..... 4

Puget Sound v. King, 264 U. S. 22..... 3

Southern Railway Co. v. Clift, 260 U. S. 316..... 3

State v. Duestrow, 39 S. W. 266, 137 Mo. 44..... 2


### Statute Cited.


Missouri Constitution, Sec. 3 of Art. VI..... 3

Missouri Constitution, Art. III..... 3

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

EDWARD WILLIAMS,
Petitioner,
vs.
JOHN J. GOLDEN, Marshal, City of St. Louis,
Respondent.
No. 303.

## PETITIONER'S REPLY BRIEF.

I.

The respondent, in his brief, has questioned the jurisdiction of this Court in this case.

It is the respondent's contention that a motion should have been filed to transfer this cause from Division No. 2 of the Supreme Court of the State of Missouri to the court en banc. Respondent admits, however, that the Supreme Court of the State of Missouri is the highest court in the state.

Respondent's brief does not state that a final judgment in Division No. 2 of the Supreme Court is not a final judgment of the highest court in the state. Final judgment of the highest court in the state is the only statutory requirement for jurisdiction of this court.

The contention that a motion to transfer to court en banc should have been filed raises the question as to whether the court en banc is a superior court to Division No. 2 of the same court. The Missouri Supreme Court itself has definitely stated that a division of the court is not inferior to the court en banc. We quote from **State v. Duestrow,** 39 S. W. 266, 137 Mo. 44, as follows:

> "By the original Constitution the Supreme Court has superintending control over inferior courts only. But a division cannot be said to be inferior to the court. The judgment of a division has the same force and effect as the judgment of the court. Neither the subject matter of the suit, the amount in dispute, nor the question involved, distinguishes the jurisdiction of the court from that of a division. The court and the divisions therefore have concurrent jurisdiction in civil matters, and Division 2 has exclusive jurisdiction in criminal cases. The divisions are not, therefore, inferior courts, within the meaning of section 3 of article 6 of the Constitution, which gives the Supreme Court superintending control over inferior courts. Nor is such power of control inherent in the court. The highest courts of this country do not represent the sovereignty, as formerly did the court of king's bench in England, in which the inherent power to control all inferior courts resided. In this country the superintending power of one court over another, if it exists at all, does so by virtue of constitutional or statutory authority. The power of supervision resides in the Supreme Court of Missouri only by virtue of the sovereign authority of the people, expressed in their constitution. High, Extr. Rem., c. 12. No power is given the court to control in any respect the disposi-

> tion of criminal causes or matters pertaining to them, but all laws relating to practice in the Supreme Court, as well as the rules of the Supreme Court, 'as far as they may be applicable thereto,' shall apply to their disposition."

Under this decision of the Missouri Supreme Court a motion to transfer to the court en banc amounts to the same as a motion for rehearing, and this Court has ruled that the filing of a motion for rehearing in the highest court of the state is not a necessary condition precedent for review by this Court. **Puget Sound v. King,** 264 U. S. 22; **Southern Railway Co. v. Clift,** 260 U. S. 316.

As cited in respondent's brief, fifteen days time is allowed to transfer a cause to the court en banc. This time expired May 20, 1940, and the judgment of Division No. 2 became final on that date.

Under this state of facts and the law applicable thereto it seems that there is no foundation for respondent's contention.

Petitioner also wishes to call the Court's attention to the fact that this cause, a habeas corpus action, originated in the Supreme Court of the State of Missouri under Section 3 of Article VI of the Missouri Constitution. In the same amendment of 1890 pertaining to the powers of the Supreme Court as cited by the respondent, there is found in Article III the following sentence:

> "Each division shall have authority to issue the original writs and exercise the powers enumerated in section 3 of article 6 of the Constitution."

Under this constitutional provision, a cause of this nature is fully determined by the division of the court that renders judgment therein.

## II.

The argument of the respondent that the cases cited by the petitioner are not applicable, as they deal only with the religious question, seems untenable.

In the case of **Cantwell v. State of Conn.**, 60 Supreme Court 900, 84 L. E. 836, discussed in detail by the respondent, the statute as cited therein is analogous to the city ordinance in this case. In this Court's decision of the Cantwell case it is set forth in detail the limits within which a statute or ordinance of this nature may be constitutional. It is our view that the ordinance in question in this case does not come within these limits.

It is hardly conceivable that the ordinance in question in this case cannot be measured by the standard as set down in the Cantwell case, because the petitioner in the Cantwell case was convicted of soliciting for a religious purpose, while the petitioner in the present case faces the charge of soliciting for a charitable, patriotic or philanthropic purpose.

For us it is difficult to see how a discriminating standard can be set that would allow a conviction in the present case. The Fourteenth Amendment sets up no classification and it is difficult to see the basis for declaring a statute or ordinance unconstitutional as to one person or class and constitutional as to all others enumerated therein. The ordinance might just as well permit all people wearing a black necktie to solicit and prohibit all wearing a white necktie.

In consideration of the foregoing premises, the petitioner respectfully submits that the cause is one calling for the exercise by this Court of their supervisory powers and orders that the errors of the Supreme Court of the State

of Missouri be reviewed and that to this end a writ of certiorari be granted and this Court should review the decision of the Supreme Court of Missouri in this matter and finally reverse it.

ROBERT W. HALL,
J. A. GOCHENOUR,
Counsel for Petitioner.

Office - Supreme Court, U. S.
FILED
SEP 9 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

EX PARTE EDWARD WILLIAMS,
Petitioner,

vs.

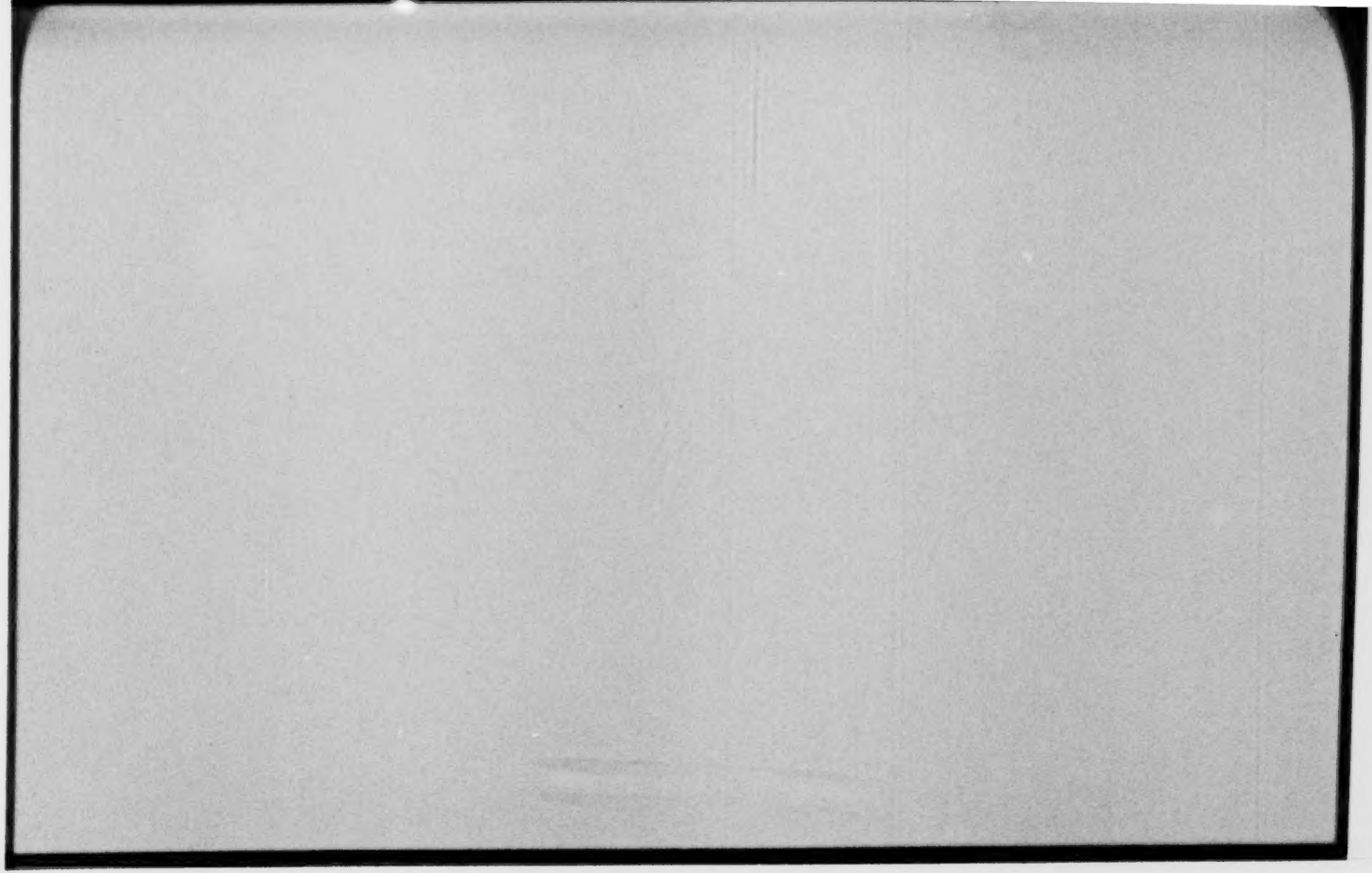
JOHN J. GOLDEN, Marshal of the City of St. Louis.

No. 303.

## RESPONDENT'S BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

EDGAR H. WAYMAN,
City Counselor,
OLIVER SENTI,
Associate City Counselor,
234 City Hall,
St. Louis, Missouri,
Counsel for Respondent.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.



## INDEX.


Page

Opinion of the court below..... 1

Jurisdiction ..... 2

Statement of the case..... 2

Argument ..... 3


### Cases Cited.


Cantwell v. State of Conn., 60 Sup. Ct. 900..... 4, 5

Ex Parte Williams, 139 S. W. (2) 485..... 1, 3

Jaehne v. People of New York, 128 U. S. 189, 32 L. Ed. 398..... 6

Lovell v. City of Griffin, 303 U. S. 444, 58 S. C. 666, 82 L. Ed. 949..... 4

Philadelphia and Reading Coal & Ice Co. v. John Gilbert, 245 U. S. 162, 62 L. Ed. 221..... 3

Schneider v. State of New Jersey, Town of Irvington, 308 U. S. 147, 84 L. Ed. 115..... 4


### Statutes Cited.


Missouri Constitution, Art. VI..... 2, 3

Revised Statutes of Missouri 1929, page 120..... 2, 3

Rules of the Supreme Court of Missouri, Rules 21 and 24..... 3

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

EX PARTE EDWARD WILLIAMS,
Petitioner,

vs.

JOHN J. GOLDEN, Marshal of the City of St. Louis.

No. 303.

## RESPONDENT'S BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

I.

### OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of Missouri is reported in *Ex Parte Williams*, 139 S. W. (2) 485, and is also found at pages 16 to 25 in the transcript herein.

The case has not yet been published in the official state reports.

## II.

## JURISDICTION.

It is admitted that the judgment sought to be reviewed was rendered by Division No. 2 of the Supreme Court of Missouri on February 21, 1940, and that a motion for rehearing was duly filed and was overruled by said Court on the 4th day of May, 1940.

The Supreme Court of Missouri is the highest court of the state. Article VI of the State Constitution, as amended in 1890, R. S. Mo. 1929, page 120, creates two divisions of the Supreme Court of Missouri, and by section 4 provides that, when a federal question is involved, the cause, on the application of the losing party, shall be transferred to the Court for its decision. A constitutional question was decided by Division No. 2 of the Supreme Court of Missouri, but the petitioner failed to exhaust the jurisdiction of that court, in that he did not file a motion to transfer the cause to the Court en banc.

It is admitted that the federal statutes cited in paragraph 5 of the second subdivision of plaintiff's brief (under the caption "Jurisdiction") governs the issuance of writs of error to state courts.

## III.

## STATEMENT OF THE CASE.

The statements of fact set out in the petition for certiorari (p. 4) under the caption "Summary Statement of Matter Involved" are accepted as correct without admitting the conclusions of law predicated thereon by the petitioner.

## ARGUMENT.

### I.

This case was decided by Division No. 2 of the Supreme Court of Missouri (*Ex Parte Williams*, 139 S. W. [2] 485). No motion to transfer to the Court en banc was ever filed.

Article VI of the State Constitution, as amended in 1890, R. S. Mo. 1929, page 120, creates two divisions of the Supreme Court of Missouri and by section 4, in part, provides:

> "* * * or when a Federal question is involved, the cause, on the application of the losing party, shall be transferred to the Court for its decision * * *."

Under the Missouri practice, the motion for rehearing in the Supreme Court does not perform the office of a motion to transfer to the Court en banc. Rule 21 provides that motions for rehearing shall be filed within ten days after the opinion of the Court shall be delivered. Motions to transfer to the Court en banc are governed by Rule 24, which provides that they shall be filed within ten days after the disposition of the cause by the division (Rules of the Supreme Court of Missouri, Appendix to Missouri Reports 344).

Certiorari to review the decisions of a state court is not a writ of right, but is discretionary (*Philadelphia and Reading Coal & Ice Co. v. John Gilbert*, 245 U. S. 162, 62 L. Ed. 221). The issuance of the writ where the petitioner has failed to avail himself of every reasonable avenue of redress in the state courts not only casts an undue burden upon this Court, but requires the respondent to litigate here what might have been determined in the petitioner's favor in the state courts.

## II.

In support of the contention that the ordinance for the violation of which he was arrested is invalid, the petitioner cites:

*Lovell v. City of Griffin*, 303 U. S. 444, 58 S. C. 666, 82 L. Ed. 949;
*Schneider v. State of New Jersey, Town of Irvington*, 308 U. S. 147, 84 L. Ed. 115;
*Cantwell v. State of Conn.*, 60 Sup. Ct. 900.

In *Lovell v. City of Griffin, supra*, the ordinance prohibited the practice of distributing literature of every kind without a permit from the City Manager. The facts, as they appear in the opinion, are that the appellant was distributing religious tracts, and it was ruled that the ordinance was void on its face, the basis of this conclusion being that it violated the provisions of the Federal Constitution in respect to the freedom of the press and religious liberty.

In *Schneider v. State of New Jersey, supra*, this Court, by the consolidation of four cases, had before it ordinances of Milwaukee, Los Angeles, Worcester, Massachusetts, and Irvington, New Jersey. The Los Angeles, Milwaukee and Worcester ordinances do not purport to license, but they prohibit the distribution of handbills, circulars and like matter on the streets, and, one of them, in public places as well (308 U. S., l. c. 162), while the Irvington ordinance affects those who desire to impart information to citizens at their homes (308 U. S., l. c. 163).

In *Cantwell v. State of Connecticut, supra*, the appellants (so far as we are concerned) violated a statute requiring a permit from the Secretary of Public Welfare to solicit anything of value for an alleged religious, charitable or philanthropic cause, and authorizing the Secretary to determine whether such cause is a religious one or a

bona fide object of charity or philanthropy, and conforms to reasonable standards of efficiency. The appellants in that case sold pamphlets on religious subjects or asked contributions to defer the cost of their publication. It was held (l. c. 903) that the statute, *as construed and applied to appellants*, violated the Fourteenth Amendment as a denial of the free exercise of religious liberty.

The ordinances in all of the foregoing cases, except *Cantwell v. State of Connecticut*, are designed to prevent the distribution of literature and were condemned because they violated the constitutional provisions in respect to the freedom of the press and religious liberty.

The Connecticut statute involved in the last-mentioned case was somewhat similar to the St. Louis ordinance, but the appellants were convicted of violating those of its provisions which prevented the free exercise of religious liberty and interfered with the freedom of the press. The ordinance for the violation of which the petition here was arrested (Trans. p. 10) makes it unlawful to solicit money, property or financial assistance or to sell certain enumerated articles on the plea or representation that such sale or solicitation, or the proceeds thereof, is for either of four separate and distinct purposes, that is, charitable, religious, patriotic or philanthropic, purposes without a permit from the charitable solicitations commission established by the ordinance, which also requires the applicant for a permit to submit specified information concerning himself and the beneficiaries of his solicitation, provides for a hearing before the application for a permit is denied, and contains a saving clause (Trans. p. 14) reciting that if for any reason any section or part of a section shall be declared unconstitutional or beyond the power of the Board of Aldermen of the City of St. Louis to enact, such fact shall not affect or impair any of its other provisions.

The information upon which he is awaiting trial charges that the petitioner's solicitation was on the plea or repre-

sentation that the proceeds thereof were for a *charitable, patriotic and philanthropic purpose.* Obviously, the manner in which it is charged that the petitioner violated the ordinance has no connection either with his religious liberty or with the freedom of the press. Assuming that the constitutional provision relating to freedom of the press and religious liberty bars the enforcement of other parts of the ordinance that does not invalidate the part which was violated by the petitioner.

In *Jaehne v. People of New York,* 128 U. S. 189, 32 L. Ed. 398, it was contended that an act was invalid in that it undertook to make punishable acts committed before its enactment as well as those committed thereafter. This Court there stated what appears to be the rule applicable here, saying:

> "A legislative Act may be entirely valid as to some classes of cases and clearly void as to others. A general law for the punishment of offenses, which should endeavor to reach by its retroactive operation acts before committed, as well as to prescribe a rule of conduct for the citizen in future, would be void so far as it was retrospective; but such invalidity would not affect the operation of the law in regard to the cases which were within the legislative control."

The decisions relied on by the petitioner do not support his contention that solicitations for charitable, patriotic or philanthropic purposes are not within the legislative control of the state.

The respondent respectfully submits that the petitioner's application for certiorari should be denied.

EDGAR H. WAYMAN,
City Counselor,
OLIVER SENTI,
Associate City Counselor,
Counsel for Respondent,
234 City Hall, St. Louis, Mo.